

# EXHIBIT

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE LISA J. CISNEROS, MAGISTRATE

IN RE: UBER TECHNOLOGIES, INC., )  
PASSENGER SEXUAL ASSAULT ) No. 23 MD 03084 CRB (LJC)  
LITIGATION )  
 ) San Francisco, California  
 ) Tuesday  
 ) October 1, 2024  
 ) 10:30 a.m.

**TRANSCRIPT OF REMOTE ZOOM VIDEO CONFERENCE**

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1 Tuesday - October 1, 2024

10:39 a.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** We are calling 23-MD-03084, In Re Uber  
5 Technologies, Inc.

6 Counsel, please state your appearances for the record, and  
7 we'll start with plaintiffs' counsel.

8 **MS. LUHANA:** Good morning, Your Honor. Roopal  
9 Luhana, Chaffin Luhana, for the plaintiffs.

10 **THE COURT:** Good morning.

11 **MS. ABRAMS:** Good morning, Your Honor. Rachel  
12 Abrams, Peiffer Wolf, for the plaintiffs.

13 **THE COURT:** Good morning.

14 **MS. GOLDENBERG:** This is Marlene Goldenberg for the  
15 plaintiffs.

16 **THE COURT:** Hello.

17 **THE CLERK:** And defense.

18 **MR. SHORTNACY:** Good morning, Your Honor. Michael  
19 Shortnacy of Shook Hardy and Bacon appearing today for the Uber  
20 defendants.

21 And with me I have Veronica Gromada, Patrick Oot and  
22 Jeremy Wikler also from the Shook Hardy firm.

23 And Marc Wolf and Louis Murray of the Paul Weiss firm also  
24 speaking potentially, depending on what Your Honor would like  
25 to address, for the Uber defendants.

1                   **THE COURT:** Okay. Thank you. Good morning,  
2 everyone.

3                   So I have reviewed the joint status report that you all  
4 filed a few days ago and I figured over the next half hour that  
5 we can walk through the issues that you all do want me to  
6 engage with. I know that there's several issues that you  
7 pointed out where the parties aren't seeking any kind of Court  
8 intervention, so I won't focus on those.

9                   But to start with, as far as the custodians are concerned,  
10 I've got the extensive briefing on that. I do plan to issue an  
11 order today under seal on the matter, and the parties will have  
12 time to propose redactions before I post a public version after  
13 I decide what kind of redactions are appropriate.

14                  The order is going to resolve many, but not all, of the 18  
15 custodians that plaintiff proposed and those custodians  
16 proposed by Uber. In effect, you're going to get a sample of  
17 rulings from me, and then what I'm thinking is that I'll give  
18 you three days to meet-and-confer about any of those custodians  
19 that aren't ruled upon and negotiate an agreement, I hope, as  
20 to the rest of those custodians.

21                  I think that's going to be the best approach in terms of  
22 using the Court's time and resources and, also, given the  
23 general views and, you know, the parties, to the extent  
24 possible, should be able to negotiate and figure out what  
25 discovery is appropriate under Rule 26. So that's my update on

1 the custodians piece.

2 As far as the unsubstantiated cases go, I saw what the  
3 parties' positions were on that. I really see this issue --  
4 and I think it may have come up briefly at a prior status  
5 conference. I really see this issue kind of as a matter of,  
6 like, hygiene as far as lead -- plaintiffs' lead counsel's  
7 management of this mass tort litigation and, you know, there  
8 were earlier in the litigation hundreds of cases filed and now  
9 we're up to, you know, well over a thousand that are part of  
10 the MDL.

11 So I think it's important just to ensure that the cases  
12 that are moving forward do have substantiated trips associated  
13 with them. You know, Judge Breyer set up a process for that or  
14 a framework for that in PTO 5. And based on what I read in the  
15 status report, I don't have any concerns at this point.

16 I think there was -- like I said, you know, well over a  
17 thousand cases and it sounds like there's potentially 60 to 100  
18 cases that are of concern, but that are -- the parties are  
19 aware of them, and you all can meet-and-confer and figure out  
20 what kind of substantiated -- substantiation is still needed  
21 for them.

22 So I'm not troubled by this issue because I think that you  
23 all will be able to work through it, but I appreciate the  
24 update on that front.

25 Discovery for -- discovery on plaintiffs, this has come up

1 several times. You know, Judge Breyer set the parameters for  
2 that. If there's -- if he issues some kind of order that opens  
3 the door for that, then -- and there are disputes that arise,  
4 then I'll address it at that point.

5 On the clawback piece, you know, that's a priority for me  
6 at this point along with resolving the custodians, so I will  
7 focus on that.

8 And then somewhat related to that are the issues  
9 percolating around the privilege logs, and at this point it's  
10 really not -- I don't know how much you want to discuss what  
11 those disputes are at this point. I think to dig into it I'll  
12 need, you know, a Rule 8 letter. I'll need, you know, specific  
13 arguments to address it.

14 But what I was thinking is that we should take -- given  
15 the number of potential disputes, that I should take some  
16 sampling approach with privilege log disputes, because I have  
17 been inundated with disputes about the custodians, and I don't  
18 want -- I want to take a more measured approach for the  
19 privilege disputes when you all feel ready to tee them up for  
20 me and present a PTO 8 letter.

21 Does anybody want to speak to that in greater detail?

22 **MR. SHORTNACY:** Michael Shortnacy speaking for Uber.

23 I appreciate the Court's recommended approach. I will,  
24 from my perspective, say that we're trying to work through some  
25 issues through the meet-and-confer process that's contemplated

1 in the deposition protocol, which has a shortened time frame  
2 for responding to challenges and, also, to work through the  
3 de-designation process in a shortened time frame. And so we're  
4 trying to, you know, adhere to that process.

5 I think that we've had at least two meet-and-confers with  
6 plaintiffs that I think have been productive in terms of  
7 explaining some perceived deficiencies. Plaintiffs may have a  
8 different take on this, but, you know, instances where things  
9 appear to be blank for a document title, to take an example,  
10 but those documents are actually chats. They don't have a  
11 document title. So we're working with plaintiffs on some  
12 potential remediations for that.

13 There may be other fields that we could point to that can  
14 provide that information. And so we're trying to work through  
15 those issues collaboratively with plaintiffs. I do think it's  
16 fair to say that we will have some disputes over substance; but  
17 as a practical matter, our approach has been really, especially  
18 in light of the depositions that are coming up, to try to work  
19 through a lot of the mechanical issues that are present in the  
20 log or that appear to be present, to try to remediate those  
21 issues as best we can and, also, engage with plaintiffs on the  
22 substance where they have questions about business versus legal  
23 advice or had requested some additional information from Uber  
24 to set forth the privilege claim.

25 **MS. LUHANA:** Judge, Roopal Luhana for the plaintiff.

1 I agree with Mr. Shortnacy that the parties have been  
2 working together to address the privilege log disputes.

3 However, there are many disputes; right?

4 So we're focused on, as we raised in the joint status  
5 report, the defendants just simply complying with ESI and  
6 privilege orders that are in place. And so we listed a litany  
7 of things that are there that there isn't compliance on, and  
8 we're working through that.

9 So we need to do that first before we can address the  
10 issues and tee up these issues for Your Honor per PTO 8, which  
11 is the next steps on substance.

12 And we agree a sampling approach would be appropriate to  
13 tee up some of these disputes, to get your guidance on, your  
14 thinking, and that should apply across the board to other  
15 privilege log entries that the defendants are making. So we  
16 are working with the defendants and we'll be able to tee up  
17 disputes soon.

18 **THE COURT:** Okay. Kind of related to the timing  
19 question and -- of what Mr. Shortnacy raised about how this  
20 impacts deposition. There wasn't a lot of detail in the status  
21 report on the coordination of depositions with the JCCP.

22 I would like to do what I can to ensure that there's as  
23 much -- as much coordination as possible. I will do my level  
24 best to help with that, but is there -- do you have any  
25 thoughts that you would like to share as far as, like,

1 prioritization for the Court, things to focus on in terms of  
2 the resolution of the privilege log disputes so that  
3 depositions do happen according to a schedule that works best  
4 for the MDL and the JCCP?

5 **MS. LUHANA:** Judge, Roopal Luhana for the plaintiff.

6 Just to provide you an update in terms of coordination on  
7 depositions, I believe there are eight deposition that have  
8 been scheduled to date, and out of those eight depositions  
9 six -- we're going to coordinate on all the depositions,  
10 however, two of them are not necessarily back-to-back dates,  
11 whereas the other six will be back to back. So we are  
12 coordinating with the JCCP on these depositions.

13 What we're going to raise, and I'm sure Mr. Shortnacy is  
14 going to address, is the defendants' request for an extension  
15 to produce some of the custodial files as well as the privilege  
16 logs.

17 So we are working with the defendants to come up with  
18 dates that we can all agree on because they have stated that  
19 they will be unable to meet this October 1st date that you set  
20 for them to produce for the 37 custodians' custodial files.

21 So we will address that, but a critical issue is  
22 validation. And we have been raising -- raising this with the  
23 defendants repeatedly because, as you can appreciate, TAR is  
24 being used here, right, and so that's AI. And validation is  
25 necessary and a large part of the ESI protocol incorporates

1 validation parameters.

2 So, for example, it is important to know that the  
3 documents are appropriately being coded relevant or not  
4 relevant; right? And there's -- there's a validation process  
5 to ensure that they are being coded correctly because that's  
6 going to train the rest of the AI and may taint the pool of  
7 documents if things aren't coded correctly.

8 So we have been asking for validation parameters. For  
9 example, defendants have represented that they have completed  
10 production for, I believe, at least nine of the key custodians.  
11 Yet, we haven't received documents to review, non-privileged  
12 documents that we're supposed to review in the process as part  
13 of the ESI protocol. So validation has to be addressed in  
14 terms of the privilege log disputes.

15 There is a timeline set out with the deposition protocol  
16 and we're working toward that timeline, but in order for us to,  
17 as I said, tee these issues up for you, we need to have -- have  
18 the defendants comply with the ESI protocol and priv order for  
19 the privilege log entries so we can know that, hey, we are  
20 addressing the substance here, not these other -- for example,  
21 if they are not providing sufficient details on the privilege  
22 logs, we won't know if we can raise that as an issue for Your  
23 Honor.

24 So these -- this is housekeeping that needs to be done,  
25 and we are conferring with the defendants on these issues.

1                   **MR. OOT:** Your Honor, it's Patrick Oot on behalf of  
 2 the Uber defendants.

3                   I'll address briefly the validation approach. Typically  
 4 in these reviews the validation is completed after the review  
 5 and not on a custodian-by-custodian basis. The reasoning for  
 6 that, as you can imagine, it would be an additional 3,000  
 7 documents that you're reviewing over and over again and adding  
 8 onto the pile.

9                   So we have offered, and I'm hoping plaintiffs have agreed,  
 10 that for the first 20 custodians we will execute a validation  
 11 exercise pursuant to the ESI protocol.

12                  Also, flagging that we've addressed in the  
 13 meet-and-confer, we may be pivoting from the relativity  
 14 platform to a different platform. Again, it's -- we're  
 15 discussing that with plaintiffs. The reasoning for that, Your  
 16 Honor, is the sheer volume of the documents that are in the  
 17 platform are affecting the ability to meet the deadlines.

18                  So we have met-and-conferred with plaintiffs about this.  
 19 We will continue to meet-and-confer with them, but the proposal  
 20 that we put forward is we really need to focus in on getting  
 21 the review complete. And if we have to stop and validate,  
 22 which we don't think was contemplated by the ESI protocol on a  
 23 custodian-by-custodian basis, then that will affect the  
 24 schedule even further.

25                  **THE COURT:** The principal defense specific, as far as

1 custodian-by-custodian validation or -- or doing validation  
 2 with a different set of custodial files.

3 **MR. OOT:** I'm sorry, Your Honor?

4 **THE COURT:** I don't have a question. I was just -- I  
 5 don't think the -- as much as detail as there was in the ESI  
 6 protocol, I don't remember that the -- there were validation  
 7 parameters that were that specific as far as, oh, this has to  
 8 be done for each -- each time you produce a custodial file it  
 9 needs to be validated, as opposed to taking some other  
 10 approach.

11 **MR. OOT:** So, Your Honor, I can speak to how  
 12 traditionally this is done, and then also how we're  
 13 interpreting the ESI protocol is traditionally at the end of  
 14 discovery, almost like a 26(g) certification, that's when you  
 15 would validate the production. So after you're through with  
 16 the various custodians.

17 We do understand plaintiffs' request for validation and  
 18 that's why we felt that if we focus on the first 20 custodians  
 19 first, it is an additional effort that we're going to have to  
 20 undertake to go and kind of stop the presses, validate that,  
 21 put a different team on that, to provide those materials.

22 And, in fact, we -- somebody on our team just sent over a  
 23 step-by-step process to plaintiffs on the -- the process that  
 24 we're following to validate. And that just went over this  
 25 morning. And I'm sure there is some more opportunity to

1 meet-and-confer about that as well.

2 **THE COURT:** Okay.

3 **MS. LUHANA:** Judge, Roopal Luhana for the plaintiffs.

4 I'll just -- I have one thing to add to what Mr. Oot is  
 5 saying. You know, each TAR protocol and validation is done  
 6 differently, and we have an ESI protocol here which allows the  
 7 plaintiffs' attorneys, a designated group of attorneys, to  
 8 review non-privileged documents in a validation sample.

9 So that's part of the requirement of what needs to be done  
 10 to ensure that TAR and AI are being utilized appropriately.  
 11 And so we need to begin that process, especially since already  
 12 the defendants have represented that they have produced the  
 13 majority of the documents from 20 custodians.

14 And you are correct that the ESI protocol doesn't break it  
 15 down custodian by -- like, that validation needs to be done  
 16 with each custodial file, but since there are these  
 17 requirements of review that are ongoing, it's necessary to  
 18 begin the process to assure that we're getting the relevant  
 19 documents that are needed in discovery.

20 **MR. OOT:** Just to respond to that, Your Honor,  
 21 briefly. As we've discussed, the model is always changing as  
 22 you are reviewing documents.

23 So we want a sufficient population -- so rather than, for  
 24 example, the ESI protocol has a set number of documents that  
 25 are included in the validation as opposed to a statistical

1 representation of the documents, the -- the reasoning for doing  
 2 this, again, after a specific point in time just makes sense  
 3 based upon the current ESI protocol.

4 So we're not in disagreement that we have to validate the  
 5 process under the ESI protocol. While we disagree with the  
 6 process that plaintiffs have to review documents as part of it,  
 7 it's -- you know, that's water under the bridge and we are  
 8 moving forward with that approach.

9 So I don't think that there's any dispute here other than  
 10 timing.

11 **THE COURT:** Okay. Yeah. Well, I think that the  
 12 validation being withheld til the end of review of all  
 13 documents being produced, because then that's rather late in  
 14 the game as far as validation. Because if there is some sort  
 15 of problem, that means that that hasn't been identified  
 16 until -- until a late point in time.

17 But it sounds like Uber's proposal was let's get 20  
 18 custodians' files collected and reviewed and do a validation at  
 19 that point, which, to me, sounds like an interim -- a proposal  
 20 that's not waiting til the very end, but doing it at a later --  
 21 excuse me, at an earlier point of, time which seems entirely  
 22 appropriate.

23 I don't know if it needs -- it makes sense to add another  
 24 point in time, you know, but it sounds -- at one point  
 25 Ms. Luhana was describing this as, really, some housekeeping

1 issues that need to be addressed in terms of dealing with these  
 2 documents -- these document productions and -- and sorting  
 3 through the validation process.

4 So I trust that you all are able to work it out, but you  
 5 know my view is that, you know, if there was ever -- if there  
 6 were ever cases where the validation was done at the very end  
 7 of a massive production of ESI, then, to me, that sounds  
 8 potentially problematic because that would mean that the  
 9 validation happens at a milestone that is late in the game, and  
 10 I think it ought to happen earlier.

11 So how many times it needs to happen, I'm sure it's  
 12 probably a fact intensive and depends on the case, depends on  
 13 the MDL, all these other things. So I'll leave it to you all  
 14 to sort out.

15 **MS. LUHANA:** Your Honor, just one additional point.  
 16 In terms of coordinating depositions, another critical issue  
 17 that has come up is hyperlinked documents, and I will defer to  
 18 Ms. Goldenberg to address the issue.

19 **THE COURT:** I think Mr. Shortnacy wanted to say  
 20 something before maybe we pivot off this topic.

21 **MR. SHORTNACY:** Thank you, Judge.

22 I did want to discuss one thing that Ms. Luhana had  
 23 mentioned previously, which is that the parties today expect to  
 24 file a joint stipulated request for extension of time. So the  
 25 Court's order at ECF 1629.

1           That's the order Your Honor entered setting forth certain  
 2 deadlines. October 1 being the first deadline for production  
 3 of certain custodial files, and then there were some additional  
 4 dates into November.

5           And I -- you know, to give credit where credit is due, we  
 6 raised with plaintiffs' leadership counsel as soon as the order  
 7 was entered that we didn't expect that we would be able to  
 8 comply with the order as entered, and we worked collaboratively  
 9 with plaintiffs through a number of issues and I think have  
 10 aligned jointly on some modest extensions to request of the  
 11 Court, recognizing it's a request, to vary from the Court's  
 12 order. It's not that we just, you know, agreed and think we  
 13 can change the Court's order. This is a request.

14           But just to give context, and you'll see the full filing  
 15 today, but it's moving from October 1st to October 21 on one of  
 16 the deadlines, and November 1st to November 26. There are  
 17 other deadlines that are -- would be more complicated to get  
 18 into in the oral proceedings here, but my point is only that  
 19 it's a fairly modest, I think, request to push some dates out  
 20 into the future that we think will move heaven and earth to  
 21 comply with, but that can be done. And so we would just  
 22 respectfully request the Court consider that when it's on file.

23           **THE COURT:** Thank you.

24           **MS. LUHANA:** I would like to add, in terms of working  
 25 with the defendants to come to an agreement for the stipulation

1 that's going to be filed later today, what plaintiffs have  
2 represented to defendants is we're willing to give the  
3 extension, provided some of these issues are resolved relating  
4 to validation, relating to privilege logs in terms of complying  
5 with the ESI protocol and privilege order, the hyperlinked  
6 document issue, which is going to become so much larger and  
7 needs to be addressed immediately, as well as complete  
8 personnel files that are produced per the deposition protocol.

9       And I would just like to turn over to Ms. Goldenberg to  
10 address the hyperlinked issue.

11           **MS. GOLDENBERG:** Which I know is your favorite.

12       So one is -- I guess both of these are just issues that we  
13 wanted to flag for the Court and I think, you know, we'll  
14 probably have this fleshed out more fully in very short days to  
15 come, but we've noticed a couple issues.

16       Number one, in the *Social Media* litigation, which I  
17 believe is one of the cases that Your Honor relied on in  
18 finalizing the ESI protocol and ordering how many hyperlinks --  
19 or how many different documents we were able to ask for all the  
20 versions of the hyperlinks on, that order has now been amended  
21 and the plaintiffs get, I believe, 200 hyperlinked documents a  
22 week, not total.

23       And we were really hoping that we wouldn't need a ton of  
24 these, but as we're going through the production and preparing  
25 for depositions, we can easily envision a situation where you

1 put a document in front of a witness and say, you know: Is  
 2 this the document that you drafted at the time that this email  
 3 was sent? And the answer from the witness would be: Well, I  
 4 don't know. Right? This is the finished version.

5 And so certainly we're going through documents right now.  
 6 We're attempting to make sure that when we go take depositions,  
 7 we only have to take them once and that we are going to get  
 8 good answers from witnesses, but we wanted to preview for Your  
 9 Honor that we anticipate that this is going to come up and we  
 10 may be back in front of you with that issue.

11 **THE COURT:** When I set a benchmark to start with, I  
 12 felt that that was very much a preliminary benchmark in large  
 13 part because I didn't really have enough information -- or much  
 14 information in the record that really explained to you what's  
 15 entailed when it comes to tracking down a hyperlinked document  
 16 that was contemporaneous with the message that was sent,  
 17 whether it was an email or a chat message or whatever  
 18 communication method was used.

19 So I felt that I was in the dark, but I just thought to  
 20 start out with I would do what I've seen in other Court orders  
 21 and then we could further address the issue at a later point in  
 22 time.

23 I knew at that point that the contemporaneous hyperlinked  
 24 documents couldn't be produced on any sort of automated  
 25 scalable way, but we're also living and working in the world of

1 fast evolving technology around ESI.

2       So I just -- I mean, if anybody wants to speak to how easy  
 3 it is to get these links, maybe I can -- I can look at that  
 4 *Social Media* case, but there must -- I imagine in that case  
 5 there must have been something that was presented to Judge Kang  
 6 to -- and I believe it's Judge Kang's case -- to show that this  
 7 level of production using hyperlinks is reasonable, is not  
 8 unduly burdensome for whatever responding party is producing  
 9 it.

10           **MR. WIKLER:** Your Honor, if I could respond briefly?  
 11 This is the first I've heard this request or this proposal, and  
 12 we're happy to discuss any of this with plaintiffs' counsel in  
 13 a meet-and-confer.

14           But, I mean, you know, of course there have been a number  
 15 of decisions that have come out since our decision, too. *In Re*  
 16 *Insulin*, the *In Re Stub Hub Litigation* in the Northern District  
 17 of California that said that the parties don't need to produce  
 18 any hyperlinked documents.

19           And my suspicion -- and I'm not familiar with the *Social*  
 20 *Media* case decision that Ms. Goldenberg referenced, but my  
 21 suspicion is that that's -- you know, the party is not  
 22 producing hyperlinked documents already and then, you know,  
 23 it's just the contemporaneous issue.

24           I'm guessing that's 200 period a week, whereas Uber is  
 25 already producing thousands and thousands of hyperlinked

1 documents already, which is more than any of these Courts that  
 2 I've seen, certainly this year, that are required.

3 But in any event, you know, we're hearing that for the  
 4 first time here and happy to discuss.

5 **THE COURT:** The thing about the hyperlinked documents  
 6 that are produced and the way that they are produced from the  
 7 Google G Suite is in some instances what's produced may not be  
 8 at all sort of reflective of what was actually communicated at  
 9 the time that was -- the message was sent because if the -- the  
 10 document iterated a lot of different times since then, then  
 11 what you've produced is -- isn't meaningful in terms of  
 12 understanding the message that was communicated at that point.

13 So, you know, I understand that Uber is producing a lot  
 14 given the methodology that is currently automated and readily  
 15 available, so a lot is being produced by Uber using that  
 16 available technology, but it doesn't mean that it's all  
 17 naturally truly responsive. If it's an attachment or a  
 18 moderate attachment, hyperlink, whatever word you use, it's  
 19 something that is -- it's in no way connected to that message  
 20 that was sent at that particular time.

21 So anyways, this is an issue that I really kind of dug  
 22 into months ago, but you know my thinking on it.

23 What hasn't been clear to me is just what is the burden.  
 24 What are the logistical steps to actually producing a  
 25 contemporaneous document. And I'll go back and look at the

1       Social Media case. I know this needs to be addressed promptly.

2           You can negotiate it based on what I'm sharing today and  
 3 by looking at the cases that have been decided more recently,  
 4 but not -- not just the Social Media case that plaintiffs are  
 5 pointing to, but anything else that Uber may also think is  
 6 relevant. My hope is that you negotiate it and figure it out.

7           **MS. GOLDENBERG:** We will do our level best.

8           And I'll just say that the Social Media decision did  
 9 consider burden, but I'll speak with Mr. Wikler offline and see  
 10 if we can work something out before we tee up any disputes in  
 11 front of you.

12           The other hyperlink issue that we wanted to flag is that  
 13 we've identified numerous documents, and so has the JCCP, where  
 14 hyperlinked documents are not being listed as family members or  
 15 they're just not being produced in the metadata for the  
 16 documents that we have.

17           The JCCP sent Uber some examples just to give them an idea  
 18 of what this looks like, but our concern is that Uber seems to  
 19 be taking the position that they are only going to fix this if  
 20 we identify every document where there's a problem and that's  
 21 not our burden. They have an ESI protocol that tells them how  
 22 to produce things.

23           And certainly if we see issues, we will raise them; but  
 24 what we don't want to have happen is have this burden shifted  
 25 back to us to audit their entire production, identify any

1 documents that are missing, and then wait for them to be  
 2 produced. We would like Uber to go back and do an audit of  
 3 their own production and make sure that they have complied with  
 4 the order.

5 And, you know, if we're forced to do that, that's time and  
 6 money that our attorneys have to spend. That takes away from  
 7 deposition prep right now. And certainly we want to make sure  
 8 the depositions can move forward and be coordinated, but we  
 9 can't do that if we are spending all our time auditing what  
 10 Uber was supposed to do.

11 **MR. WIKLER:** Your Honor, if I can address this.

12 One is whatever this issue is that was referenced in the  
 13 joint status report and is being referenced now has not been  
 14 presented to us. I don't know what the basis is for this  
 15 assertion and we can't assess what this.

16 But at the same time the reference to what the JCCP  
 17 plaintiffs provided, my understanding was not that that was an  
 18 example, was that that was the issue they had identified and  
 19 is -- has been corrected in part, is being corrected. The  
 20 documents will be produced that they identified.

21 The MDL plaintiffs haven't specifically said anything in  
 22 particular that we can correct. But I think, just to cut  
 23 through that, like -- I'd like to get on the phone with  
 24 Ms. Goldenberg and hear what this is.

25 And I agree that we are expecting -- we aren't going to

1 intentionally do something wrong in the production and then sit  
 2 on our hands and wait to see if plaintiffs catch it. But I  
 3 want to hear what the issue is. I want to be able to address  
 4 it. I want to be able to talk to my vendor and talk to our  
 5 people on our team who are more knowledgeable about this and  
 6 then address it and make sure that it's addressed going forward  
 7 so that this isn't an issue.

8                   **THE COURT:** Thank you, Mr. Wikler.

9                   Let me help. I'm directing plaintiff and Uber to talk  
 10 after this status conference is done to promptly address this  
 11 issue, figure out the extent of any kind of gaps in the  
 12 production or, you know, errors and what the plan is to address  
 13 them quickly in a scale. Okay?

14                   **MR. WIKLER:** Thank you, Your Honor.

15                   **MS. GOLDENBERG:** Thank you, Your Honor.

16                   Mr. Wikler I just re-forwarded you our conversation that  
 17 began on January 6th about this -- sorry, September 6th.

18                   **MR. WIKLER:** Okay. And to correct the record there,  
 19 there's nothing in there that says that you were missing  
 20 documents.

21                   **THE COURT:** All right. Let's -- let's refocus. But  
 22 I do think it was helpful to talk about the hyperlinks issue,  
 23 but I think we've discussed it enough and you know what to do  
 24 next. Thank you.

25                   So the coordination of -- this is somewhat back to the

1 issue, the question that I had earlier, because I don't think  
 2 I've got the clarity that I need, or perhaps you said  
 3 everything that you want to say about the coordination of  
 4 depositions, but is there something that the parties need  
 5 prioritized on the Court's end in terms of the timely  
 6 resolution of discovery disputes to ensure that these --  
 7 whatever depositions you have scheduled stay on schedule and  
 8 that there's maximum coordination?

9 **MR. SHORTNACY:** Judge, it's Michael Shortnacy  
 10 speaking.

11 I think the parties, as we started working through the  
 12 issues, I think we expect there may be some issues to get teed  
 13 up sooner rather than later.

14 I do want to just clarify one thing so the Court is fully  
 15 aware. The dates that are on calendar now have been  
 16 coordinated. I think, as Ms. Luhana said, in two instances I  
 17 think the MDL leadership will take a second day, and so there  
 18 will be sort of parallel depositions. But the others, I think,  
 19 will be coordinated into a single deposition sitting between  
 20 JCCP and MDL. So I just wanted to make sure that that was  
 21 clear.

22 And the last thing I'll say about that is that the dates  
 23 that we're also going to present to this Court about extensions  
 24 of time for production of documents and so forth are also  
 25 coordinated and agreed, I guess, is maybe not the right word,

1 but that the JCCP leadership is also aware of those dates and  
 2 sort of complies with their concept of how the depositions will  
 3 be scheduled and rolled out in that proceeding. So I wanted to  
 4 provide that context to Your Honor.

5 **THE COURT:** Or if I grant the extensions that you all  
 6 stipulate to, will it put any of the parties, either in the MDL  
 7 or the JCCP, in a position of having to do depositions without  
 8 all of the documents that they need to review?

9 **MR. SHORTNACY:** Well, Judge, I guess I would say that  
 10 the plaintiffs' leadership of both proceedings have agreed to  
 11 the dates, I think understanding that we do have some issues to  
 12 resolve, and some of them have spilled out into this conference  
 13 with hyperlinks and privilege and so on.

14 But I don't foresee that those dates will cause any issues  
 15 and they are agreed at this point.

16 **MS. LUHANA:** Judge, Roopal Luhana for the plaintiffs.

17 The dates may cause some issues for the JCCP because I  
 18 believe their discovery cut-off is sometime January 15th, and  
 19 some of the dates that are proposed as part of the extension  
 20 for the disputed custodians' custodial files are, I believe,  
 21 January 10th, and then in terms of the privilege logs  
 22 January 31st, I believe.

23 And, also, what I expressed previously still holds true in  
 24 terms of -- the MDL plaintiffs agreed to these extensions  
 25 provided that the privilege log disputes are handled, provided

1 that the validation issues are addressed, and importantly the  
 2 hyperlink document issue is addressed as well. So that's  
 3 imperative for us to agree to this extension.

4 **MR. SHORTNACY:** Judge, I would just say, as you know,  
 5 as you've directed, the parties are going to meet-and-confer  
 6 about those issues.

7 There's one issue, Judge, I wanted to just raise. I know  
 8 we're over time, but I do think it's important for you to hear  
 9 it because it pertains to the depositions that are coming up.

10 Ms. Luhana had mentioned a complete personnel file, and I  
 11 foresee that we may need the Court's assistance on this one.  
 12 So for a deponent, what Uber has provided in advance of the  
 13 deposition is a printout of the job titles and dates of  
 14 employment and the dates in which the employee or former  
 15 employee held a specific title over the course of their tenure  
 16 at the company.

17 We've agreed to provide a C.V. for the deponents and to  
 18 the extent there's not one available, if there is a LinkedIn  
 19 profile, to be -- to produce that and to facilitate the  
 20 efficient handling of the deposition in terms of covering an  
 21 employee's work history and educational background. We  
 22 understand that that moves that process along swiftly in a  
 23 deposition.

24 I think the issue we're having, Judge, is what else the  
 25 plaintiffs are asking for and have a need for because, as the

1 Court I'm sure is aware, there is sensitive personal  
2 information inside of a personnel file, like undisclosed  
3 disabilities, compensation, emergency family contact  
4 information. There's a number of things, and those are  
5 protected under the California Constitution and the right to  
6 privacy.

7 And so the issue is that there is a -- there is a dispute  
8 as to what that means and what the showing of need is of  
9 plaintiffs to have anything more than the information we've  
10 provided to facilitate the deposition.

11 **THE COURT:** Does plaintiff need a complete personnel  
12 file that shows the custodians who are current or former Uber  
13 employees?

14 **MS. LUHANA:** Judge, what we've requested is what's  
15 typically produced in other cases and is included in the  
16 personnel file: The C.V., as Mr. Shortnacy represented,  
17 performance evaluations or -- performance evaluations and  
18 reviews. Background checks that are done on the employees, as  
19 well as compensation. Documents that show the employee's or  
20 former employee's compensation.

21 So those are the four things we've raised that the  
22 defendant should produce in the personnel file.

23 **MR. SHORTNACY:** Judge, for our part we don't believe  
24 any of those things are relevant. None of the employees'  
25 conduct is at issue in this case. And there are a number of

1 Courts who have acknowledged the right to privacy of employees,  
 2 including Judge Corley in the *Music Group* case at 2015 Westlaw  
 3 2170121. And the *Hatamian* case, 2015 Westlaw 7180662.

4 And there Judge Corley found that unless there's some  
 5 specific showing of need or where that -- the conduct or  
 6 background of a specific employee is at issue, that information  
 7 should be protected under the Constitution, the California  
 8 State Constitution.

9 **THE COURT:** I don't think an across-the-board  
 10 requirement that Uber produce the performance evaluations,  
 11 background check and compensation for every Uber employee,  
 12 current or former, who is a custodian -- deposed, excuse me, is  
 13 necessary for this case.

14 If there's some specific particular individuals where you  
 15 think that there -- "you" being plaintiffs think that there's  
 16 some overlap between what is going on with respect to their  
 17 performance evaluation or their background that somehow layers  
 18 onto their handling of work at issue that are directly relevant  
 19 to the claims in the case, then maybe for certain individuals  
 20 that might be an appropriate discovery request; but I think  
 21 across the board for all of them, I don't -- that appears to me  
 22 overbroad.

23 So if there's a handful that you think that this is really  
 24 needed, then do it, but --

25 **MS. LUHANA:** Judge, there are --

1                   **THE COURT:** Go ahead.

2                   **MS. LUHANA:** I would just say there are some  
 3 employees, some former employees that spoke out against Uber's  
 4 policies. And so if that's noted in a performance evaluation  
 5 and evaluated, that's something that's critical and relevant  
 6 discovery here. And so in those situations we would think it's  
 7 important.

8                   In addition to that --

9                   **THE COURT:** There you're pointing out a specific  
 10 overlay, but identify those current or former employees where  
 11 you think that there is a specific nexus.

12                   **MS. LUHANA:** Sure. We're happy to do that.

13                   **THE COURT:** But a categorical requirement for all of  
 14 these individuals is overbroad. And I'm talking specifically  
 15 about performance evaluations, background checks and  
 16 compensation. I mean, you can ask them at the deposition: How  
 17 much did you make?

18                   **MS. LUHANA:** Well, background checks are slightly  
 19 different, because we do want to compare the background checks  
 20 in this litigation, what Uber does for its employees versus  
 21 what it's doing for the drivers. And so it takes on different  
 22 meaning in this litigation.

23                   **THE COURT:** Well, I think you could explore that  
 24 issue, but to do that by asking for background check  
 25 information on every current and former employee that Uber has

1 as part of its personnel file, it seems like an overreach as  
 2 far as the specific issue that you flagged, what you're trying  
 3 to accomplish in terms of learning about it and what -- the  
 4 discovery that you're demanding.

5 **MS. LUHANA:** Understood. But we're operating in a  
 6 vacuum here because we are unclear as to the contents of Uber's  
 7 personnel files.

8 So what we have requested is they give us a list of what's  
 9 in the file and what they are objecting to producing, and then  
 10 we can have a conversation. But at this point --

11 **THE COURT:** I want to speed up this process.

12 **MS. LUHANA:** Sure.

13 **THE COURT:** So I just don't -- I'm not seeing an  
 14 across-the-board categorical connection or need between the  
 15 background checks and giving each deponent's background checks  
 16 that's in their personnel file, if that exists at all. So Uber  
 17 doesn't need to produce that.

18 But if you've got some particular employees where you  
 19 think there's a nexus between particular performance problems  
 20 or their background and the issues that are at the forefront of  
 21 this case, then maybe there's some isolated employees where  
 22 that's an appropriate discovery request, but not for all of  
 23 them. Okay?

24 So if there's anything -- okay. The third-party  
 25 discovery, I want to -- and that's the last issue I think that

1 we need to address. So *Ballard* and *Chertoff* is fully briefed.

2 On the horizon you've got a few other third-party  
 3 discovery disputes, one of which is -- relates to Bret Stanley,  
 4 who is counsel?

5 **MS. GOLDENBERG:** That's right.

6 **THE COURT:** So I don't see why that would be a  
 7 dispute. I ruled on Sarah Peters' subpoena.

8 **MS. GROMADA:** Your Honor --

9 **THE COURT:** Go ahead.

10 **MS. GROMADA:** I'm sorry, Your Honor. I didn't mean  
 11 to interrupt you. I'm Veronica Gromada for Uber.

12 Your Honor, Bret Stanley is distinct from Sarah Peters in  
 13 part because Sarah Peters's litigation files that were at issue  
 14 are of the same type that were a part of the PTO 5 rulings;  
 15 right? So those were other allegations of the same nature of  
 16 this litigation.

17 Whereas, Mr. Stanley's files that are at issue are a  
 18 completely different type of matters. They were  
 19 employee-related matters that were arbitrated and did not  
 20 relate to driver -- independent driver earner or rider type of  
 21 legal disputes. And so they are very distinct.

22 Further, a lot of what Mr. Stanley has contained in those  
 23 files that plaintiffs indicated they wanted relate back to the  
 24 policies, knowledge bases, et cetera, which, you know, we've  
 25 spent quite a bit of time with Your Honor going through that

1 process to identify the types of documents and information that  
 2 plaintiffs were hoping to seek and had even made an offer to  
 3 plaintiffs that to the extent there are other discrete requests  
 4 you would like -- that they would like us to entertain, that  
 5 we're open to doing the same.

6 **MS. GOLDENBERG:** May I respond on that, Your Honor?

7 My understanding is Mr. Stanley wasn't able to be on the  
 8 hearing today. So while I haven't been seen his documents, I  
 9 can tell you that my understanding of what exists are things  
 10 that are actually quite relevant and, in fact, Ms. Gromada just  
 11 identified a couple of them. And what better way to reduce the  
 12 burden on Uber than to get documents that we already have.

13 So, you know, first -- first, that would be very helpful  
 14 there.

15 Second, it is very difficult to tell any attorney,  
 16 especially one on our leadership team, that he can know one  
 17 thing in one case and not in another. That makes it rather  
 18 difficult.

19 But, thirdly, these cases are -- even though the subject  
 20 matter was slightly different in that it was an  
 21 employee/independent contractor issue, that's one of the big  
 22 defenses that Uber is raising in our case, and we also have to  
 23 be able to address that.

24 So in our mind -- I mean, unless Uber is going to say here  
 25 on the record today, Your Honor, we're not going to make this

1 employee/independent contractor thing an issue for you at all  
 2 at trial, then all of these issues are quite relevant and all  
 3 we're asking for -- I mean, this isn't an issue where we're  
 4 trying to reduce a burden on a third party. This is a third  
 5 party who says: I have these documents. I'd just like to be  
 6 able to know what I know in Case A in Case B.

7 **MS. GROMADA:** Your Honor, if I may add another point  
 8 of distinction.

9 We also need to appreciate that these protective orders  
 10 that are in place in these cases are in place for a reason.  
 11 Just as Your Honor made a ruling here in this case to protect  
 12 certain private information of Uber employees, we're also  
 13 talking about other litigation involving Uber employees, and  
 14 there are documents and information that should remain private,  
 15 confidential, et cetera, in that litigation, distinct from this  
 16 litigation.

17 Again, if Mr. Stanley, who is a part of the leadership  
 18 team for plaintiffs, wants to make specific discovery requests,  
 19 I think we can deal with those discretely.

20 But in -- but to basically allow all of the discovery that  
 21 took place in that case to be produced and shared with the  
 22 plaintiffs in this case I believe is improper and violates the  
 23 protective order that's in place in that employment litigation.

24 **THE COURT:** Well, I can tee up the issue from my  
 25 review, but my preference would be that there is some sort of

1 negotiated resolution to the dispute. You know, it's entirely  
 2 possible that he has some information that relates to this case  
 3 from a prior case that he -- that he's aware of it.

4 You know, we've gone over this knowledge-based policy  
 5 issue. And forgive me if my verbiage is slightly off in  
 6 describing it, but at the core, you know, he's got a view and  
 7 plaintiffs are trying to figure out what were Uber's policies  
 8 and practices in certain areas. And if that information is  
 9 readily available through the subpoena tool, there's no burden  
 10 or other -- you know, question as to relevancy and any other  
 11 concerns are sufficiently addressed that would be implicated by  
 12 a subpoena, then you all should be able to work it out.

13 Maybe it's not that he turns over -- appropriate for him  
 14 to just take wholesale what Uber's production was, but to  
 15 identify pieces of it and that do cross over, including not  
 16 just the policies but, you know, what -- what is Uber's  
 17 treatment of these -- of these drivers as far as their  
 18 employment status versus their independent contractor status  
 19 that can tie in with vicarious liability or other claims here.  
 20 It does seem to be like a pretty prominent issue.

21 So I think -- you know, I'm supposed to conduct discovery  
 22 in a way that maximizes efficiency and economy, and this seems  
 23 like one very reasonable approach to take. And it doesn't --  
 24 so long as it's relevant and not unduly burdensome or it  
 25 violates Rule 26 in some other way, it seems like some of this

1 should be disclosed.

2 And then making plaintiffs go through the formality of a  
 3 discovery request under other rules of procedure that we have,  
 4 I just -- I think it elevates form over substance in a way that  
 5 is -- undercuts the demands for efficiency that we have, so --  
 6 and economy.

7 So that's how I see this. Meet-and-confer on it. I know  
 8 Mr. Stanley is not here today to address it. I'm sure he would  
 9 be probably full throated in his advocacy, but why don't you  
 10 take that time and energy and just focus on brokering a  
 11 solution, because there's plenty of other issues that I am  
 12 going to have to address for the parties.

13 **MS. GROMADA:** Your Honor, and so if I understand,  
 14 we're still going to end this conferral, try to broker a deal  
 15 that's consistent with Rule 26, which does not allow cloned  
 16 discovery. So we can broker a deal that is specific for and  
 17 proportional to the needs of this case.

18 So I just want to make sure as I understand the Court's  
 19 guidance.

20 **THE COURT:** It's not cloned discovery in that you're  
 21 not obligated to just produce a copy of every production you've  
 22 ever done in prior litigation.

23 You know, in other cases where I've handled this issue,  
 24 even where you're talking about two antitrust cases, I still  
 25 parse through what the claims are in the respective cases and

1 what the -- what the discovery disputes -- or what the  
2 discovery is that's requested to make sure that it's not as  
3 simple as copy and dump.

4 Okay? I hope that's enough guidance.

5 **MS. GROMADA:** Understood, Your Honor. Thank you.

6 **THE COURT:** Okay.

7 So that was what I wanted to discuss with respect to the  
8 third-party subpoenas. We're at an hour, which I think is more  
9 than enough time for today's discovery status conference. I  
10 hope it was helpful.

11 **MR. SHORTNACY:** Yes. Thank you, Your Honor.

12 **MS. LUHANA:** Thank you, Your Honor.

13 **THE COURT:** Okay. All right. Thank you everyone.

14 Take care. Bye-bye.

15 **THE CLERK:** Court is now adjourned.

16 (Proceedings adjourned.)

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**CERTIFICATE OF OFFICIAL REPORTER**

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

*Debra L. Pas*

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Debra L. Pas, CSR 11916, CRR, RMR, RPR

Wednesday, October 2, 2024